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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/205,297	12/04/1998	GEORGE N. VALKANAS	2577-106P	7933

2292 7590 07/21/2003

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EXAMINER

CINTINS, IVARS C

ART UNIT	PAPER NUMBER
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1724

27

DATE MAILED: 07/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-27

**Advisory Action**

Application No.

09/205,297

Applicant(s)

VALKANAS ET AL.

Examiner

Ivars C. Cintins

Art Unit

1724

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 48

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 27 and 29-35

Claim(s) withdrawn from consideration: 36-47

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See attached supplement

Art Unit: 1724

SUPPLEMENT TO ADVISORY ACTION

The proposed amendment filed June 26, 2003 will be entered because it is agreed that the crosslinking agent in the Table at the top of page 4 of the specification is DCMDMB, and not DMDMB as written. Applicant should, however, further label this table as "Table 1" for consistency. See page 4, four lines from the bottom, of the amendment filed March 30, 2000. Also, Applicant must address the objection to the disclosure, contained in the first paragraph on page 2 of the Final Rejection dated April 8, 2003.

Claims 27 and 29-35 remain rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. As pointed out in the Final Rejection dated April 8, 2003, the limitation that the product has a porosity of  $0.279\text{--}0.477\text{ cm}^3/\text{g}$  (claim 27, last line) does not appear to be supported by the disclosure originally filed, and hence constitutes **new matter**.

Applicant's arguments filed June 26, 2003 have been noted and carefully considered, but are not deemed to be persuasive. Applicant argues that the above noted porosity range is supported by the statement on page 3, lines 27-31 of the specification that "... the porosity is studied which was found to be low up to 4% of cross-linking agent and then to increase." It is pointed out, however, that while this statement is certainly true since  $0.319\text{ cm}^3/\text{g}$  at 16% crosslinking and  $0.477\text{ cm}^3/\text{g}$  at 32 % crosslinking represent an increase in porosity over  $0.279\text{ cm}^3/\text{g}$  at 4 % crosslinking, there is no evidence that this increase in porosity will be linear, particularly since the porosity of the polymer decreases when the crosslinking percentage


Art Unit: 1724

increases from 1% to either 2% or 4% (see lines 2-4 of Table 1). Accordingly, the disclosure originally filed does not appear to support each and every porosity value contained within the range (i.e. "0.279-0.477 cm<sup>3</sup>/g") now recited in the last line of claim 27; and therefore, this newly recited range is deemed to constitute **new matter**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Blaine Copenheaver, can be reached at (703) 308-1261.

The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

  
**Ivars C. Cintins**  
**Primary Examiner**  
**Art Unit 1724**

I. Cintins  
July 20, 2003